

BRIEF ENFORCEMENT HEARING MEMORANDUM

1. Respondent: Protect Our Pets and Wildlife Case No. 01-134
2. Activity: Failure to timely file orders placed for broadcast political advertising during the 2000 election.
3. Alleged violation:

Alleged Violation of RCW 42.17.080 and 42.17.090

Staff alleges that Protect Our Pets and Wildlife violated RCW 42.17.080 and 42.17.090 by failing to timely file an Order Placed report (PDC form Schedule B) disclosing the cost of broadcast political advertising supporting I-713 during the 2000 election.

RCW 42.17.080 requires in part that political committees file Public Disclosure reports summarizing contributions and expenditures on the twenty-first day and the seventh day immediately preceding the date on which the election is held.

RCW 42.17.090(1)(f) and (h) require in part that political committees report the name and address of any person to whom an expenditure was made in the aggregate amount of more than fifty dollars during the period covered by the report, and the amount, date, and purpose of each such expenditure, as well as the amount owed for any debt, obligation, note, unpaid loan, or other liability in the amount of more than two hundred fifty dollars or in the amount of more than fifty dollars that has been outstanding for over thirty days:

WAC 390-16-205 states:

Expenditures made on behalf of a candidate or political committee by any person, agency, firm, organization, etc. employed or retained for the purpose of organizing, directing, managing or assisting the candidate's or committee's efforts shall be deemed expenditures by the candidate or committee. Such expenditures shall be reported by the candidate or committee as if made or incurred by the candidate or committee directly.

4. Specifics:

- a. On October 6, 1999, Protect Our Pets and Wildlife submitted a political committee registration form (PDC form C-1pc) forming a political committee in support of Initiative No. 713 (I-713), an initiative to the people making it a gross misdemeanor to capture an animal with certain body-gripping traps and poisons. During the 2000 election campaign, the committee received \$935,994.94 in contributions and made \$927,454.70 in expenditures, of which a political consulting firm, Fenn & King Communications, was paid \$535,205.00 on October 18, 2000 for a "T.V. Media Buy." On November 3, 2000, Fenn & King Communications was paid an additional \$30,000 for "Media Buy Services."
- b. On October 20, 2000, political ads paid for and sponsored by Protect Our Pets and Wildlife began running in the Spokane, Yakima and Seattle markets. The broadcast political advertising publicized the committee's support of I-713. While there was an initial inquiry to purchase media time by Fenn & King on August 31, 2000, the date the committee incurred an obligation for the advertising space was on October 7, October 9, October 16, and October 20, 2000 for different television stations¹.

The dates of obligation are based on the television station's cancellation policy, the dates by which an entity may cancel advertisements previously ordered without incurring an obligation to pay for the airtime. Therefore, the order placed for seven-television station ads should have been reported on the 21-day pre-general C-4 report, due on October 17, 2000, reflecting activity from September 12, 2000 through October 10, 2000. The estimated cost of the ads for these seven occurrences amounted to approximately \$361,170 from broadcast ads placed with KOMO, KIRO, KCPQ, KHQ, KREM, KXLY and KAPP television stations. This obligation was reported 17 days late on November 3, 2000.

In addition, the order placed for two television station ads should have been reported on the 7-day pre-general C-4 report, due on October 31, 2000 reflecting activity from October 11, through October 30, 2000. The estimated cost of the ads for these two occurrences amounted to approximately \$15,880 for station KIMA, in Yakima. The second ad's estimated cost from station KING, in Seattle, is unknown. In Seattle, KING television station cancelled several ads; therefore, the amount of their estimated obligation is unknown.

In Yakima, KNDO television station did not respond to PDC inquiries concerning their cancellation policy, therefore the date the advertisement at this station should have been reported is unknown.

- c. Protect Our Pets filed a C-4 report on October 26, 2000 that contained contribution and expenditure activity covering the period October 13, through October 26, 2000. **(Exhibit**

¹ The table on pages 3 and 4 details the television stations Protect Our Pets advertised with, the estimated cost of the advertisements, the date the obligation was incurred, the report on which the obligation should have appeared, and the date the obligation was reported.

2) This report listed an expenditure of \$535,205.00 paid on October 18, 2000 to Fenn & King with "T.V. Media Buy" listed as the purpose without a breakdown of the cost per station. As previously stated, this C-4 report should have reflected an obligation totaling approximately \$15,880 from broadcast ads placed with KIMA television station and possibly obligations from KING and KNDO, however the amount is unknown.

- d. On November 3, 2000, Protect Our Pets and Wildlife submitted an amended C-4 report covering the period of October 13, through October 26, 2000. **(Exhibit 3)** This report included liabilities of \$500,150.00 reported on line 19 and included an attached Schedule B, that listed an August 31, 2000 order placed or obligation to Fenn Communications for \$500,150 described as "Media Buy". An attached memo provided a station-by-station breakdown, which included TV stations, dates, and cost of the advertisements. This table failed to include information concerning advertisements placed with KCPQ, the Fox affiliate in Seattle.

Protect Our Pets political advertising campaign and reporting of obligation:

Station:	Cost of ads ² :	Run start/end date of ads:	Date obligation incurred ³ :	C-4 due date	Date obligation reported:	Days Late
KOMO, Seattle	\$130,700	10/20/00 – 10/23/00 10/31/00 – 11/06/00 10/24/00 – 10/30/00	10/07/00	October 17, 2000	November 3, 2000	17
KIRO, Seattle	\$103,350	10/20/00 – 10/23/00 10/24/00 – 10/30/00 10/31/00 – 11/06/00 10/26/00 – 11/05/00	10/07/00	October 17, 2000	November 3, 2000	17
KING, Seattle	Unknown	10/20/00 – 10/23/00 10/24/00 – 10/30/00 10/31/00 – 11/06/00 11/03/00 – 11/06/00	<i>Cancelled</i> <i>Cancelled</i> <i>Cancelled</i> 10/20/00	October 31, 2000	November 3, 2000 (Reported \$169,650)	3
KCPQ, Channel 13 FOX, Seattle	\$61,2000 (Reflects actual cost – ads not reported on 11/3/00 list.)	10/23/00 – 11/06/00	10/09/00	October 17, 2000	November 3, 2000	17

2 Estimated cost of political ads as reported by Protect Our Pets and Wildlife on November 3, 2000.

3 Station Policy - Two-week notification prior to airtime or entity is required to pay 100% of unfilled airtime.

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Station:	Cost of ads⁴:	Run start/end date of ads:	Date obligation incurred⁵:	C-4 due date	Date obligation reported:	Days Late
KHQ, Spokane	\$26,025	10/20/00 – 10/23/00 10/24/00 – 10/30/00 10/31/00 – 11/06/00	10/07/00	October 17, 2000	November 3, 2000	17
KREM, Spokane	\$11,450	10/20/00 – 10/23/00 10/24/00 – 10/30/00 10/31/00 – 11/06/00	10/07/00	October 17, 2000	November 3, 2000	17
KXLY, Spokane	\$19,665	10/20/00 – 10/23/00 10/24/00 – 10/30/00 10/31/00 – 11/06/00	10/07/00	October 17, 2000	November 3, 2000	17
KIMA, Yakima	\$15,880	10/20/00 – 10/23/00 10/24/00 – 10/30/00 10/31/00 – 11/06/00	10/16/00 (ten-day policy)	October 31, 2000	November 3, 2000	3
KNDO, Yakima	\$16,650	10/20/00 – 10/23/00 10/24/00 – 10/30/00 10/31/00 – 11/06/00	Unknown			
KAPP, Yakima	\$8,780	10/20/00 – 10/23/00 10/24/00 – 10/30/00 10/31/00 – 11/06/00	10/07/00	October 17, 2000	November 3, 2000	17
Total:	\$393,655					

4 Estimated cost of political ads as reported by Protect Our Pets and Wildlife on November 3, 2000.

5 Station Policy - Two-week notification prior to airtime or entity is required to pay 100% of unfilled airtime.

5. Complaint from: Ed Owens, Chairperson for Citizens for Responsible Wildlife Management. In addition to the parts of the complaint staff alleges to be violations, the complainant also alleged the following:
- Protect Our Pets and Wildlife failed to include the proper sponsor identification clearly spoken in broadcast advertisements paid for and sponsored by Protect Our Pets and Wildlife. Mr. Owens added this issue to his complaint on October 27, 2000;
 - Protect Our Pets and Wildlife failed to report an in kind contribution from a postcard mailing that did not contain sponsor identification;
 - Protect Our Pets and Wildlife failed to report an in kind contribution from Progressive Animal Welfare Society (PAWS) for the costs associated with a flyer entitled “Dear PAWS Supporter“ that was allegedly sent to a nonmember of the organization (Washington Falconer’s Association).
6. Staff comments:
- (1). Concerning the alleged failure to report orders and expenditures made for broadcast media advertisements, on October 27, 2000, PDC staff contacted Lisa Wathne, campaign manager for Protect Our Pets and Wildlife, and advised the committee via voicemail to provide a station-by-station breakdown of expenditures made for the media on the committee’s most recent C-4 report. PDC staff further instructed Ms. Wathne to disclose orders placed, debts or estimated expenditures on Schedule B to C-4. Protect our Pets and Wildlife submitted an amended C-4 report on November 3, 2000 to correct the lack of orders placed information on the C-4 report previously filed on October 26, 2000.
- (2). Concerning the alleged failure to provide proper sponsor identification on broadcast advertisements, on October 27, 2000, PDC staff contacted Lisa Wathne and advised the committee to provide spoken sponsor identification as required by RCW 42.17.510(1), on the broadcast political advertising. The broadcast ads, which contained written sponsor identification, were corrected on October 28, 2000. PDC staff also became aware of an additional occurrence of lack of proper sponsor identification as required by RCW 42.17.510(1), and WAC 390-18-010(4) on a post card mailing, originally alleged to be an in-kind contribution. The committee did not redistribute the post card mailing.
- (3). Concerning the alleged in-kind contribution from Progressive Animal Welfare Society, the organization filed an Independent Expenditure report (PDC form C-6) on February 2, 2001, reflecting \$1,009.54 for the printing and postage associated with the mailing in support of I-713. The organization was found to be in violation of RCW 42.17.100 for lack of timely filing this report at the July 30, 2001 Brief Enforcement Hearing.
7. Respondent's comments: On January 5, 2001, Shawn Newman, attorney for Protect Our Pets and Wildlife provided a declaration from Peter Fenn, of political consultant Fenn & King Communications of Washington D.C., dated January 5, 2001. Mr. Fenn

stated that “an expenditure has not been made, and no obligation is incurred by merely offering to purchase media time”, because approval of media advertisements are dependent on multiple factors. **(Exhibit 4)**

On January 17, 2001, Lisa Wathne provided a sworn statement at the office of the Public Disclosure Commission, in Olympia, Washington. During the interview, Ms. Wathne stated that she did not know when Fenn & King placed orders with media outlets.

8. Previous enforcement actions: None

RESPECTFULLY SUBMITTED the 8th day of October, 2001.

Suemary Trobaugh
Political Finance Specialist

Exhibit List

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| Exhibit 1 | On October 12, 2000, Protect Our Pets and Wildlife filed a Summary Report (PDC form C-4) report for the period of October 1, 2000 to October 12, 2000. |
| Exhibit 2 | C-4 report filed on October 26, 2000 by Protect Our reporting activity from October 13, 2000 through October 26, 2000. . |
| Exhibit 3 | Amended C-4 report filed on November 3, 2000 by Protect Our reporting activity from October 13, 2000 through October 26, 2000. |
| Exhibit 4 | Faxed letter filed on January 5, 2001, from Shawn Newman, attorney for Protect Our Pets and Wildlife including a declaration from Peter Fenn, of political consultant Fenn & King Communications of Washington D.C., dated January 5, 2001. |